

Government National Mortgage Association, HUD

§ 350.2

other fiduciary undertakings appropriate for financing purposes. Under this authority, the Association is authorized to acquire and otherwise deal in any mortgages or other types of obligations in which any department or agency of the United States listed in section 302(c)(2) of such Act may have a financial interest. Under its fiduciary powers, the Association may create, accept, and administer trusts consisting of interests in mortgages and obligations, sell to private investors certificates of beneficial interest, or participations, in the mortgages or obligations or in the interest and principal payments derived therefrom, and provide for payment of interest and principal and for retirement of the participations. The Association, in its ordinary corporate capacity as contrasted to its fiduciary capacity, is expressly authorized to guarantee the participations.

§ 340.3 Appropriations.

There is authority for Congress to appropriate such sums as may be necessary to enable the trustor of any trust (as described in § 340.1) to pay to the Association, as trustee, any insufficiency in aggregate receipts from the obligations subject to the trust to provide for the timely payment by the trustee of all interest or principal on the beneficial interests or participations related to such trust.

PARTS 341–349 [RESERVED]

PART 350—BOOK-ENTRY PROCEDURES

Sec.

350.1 Purpose.

350.2 Definitions.

350.3 Maintenance of Ginnie Mae Securities.

350.4 Law governing rights and obligations of United States, and Federal Reserve Banks as Depositories; Rights of any Person against United States, and Federal Reserve Banks as Depositories; Law Governing Other Interests.

350.5 Creation of Participant's Security Entitlement; Security Interests.

350.6 Obligations of the Reserve Banks as Depositories; No Adverse Claims.

350.7 Authority of Federal Reserve Banks as Depositories.

350.8 Withdrawal of Eligible Book-entry Ginnie Mae Securities for Conversion to Definitive Form.

350.9 Waiver of Regulations.

350.10 Liability of Federal Reserve Banks as Depositories.

350.11 Notice of Attachment for Ginnie Mae Securities in Book-entry System.

AUTHORITY: 12 U.S.C. 1721(g) and 1723a(a); 42 U.S.C. 3535(d).

SOURCE: 66 FR 44266, Aug. 22, 2001, unless otherwise noted.

§ 350.1 Purpose.

The purpose of this part is to achieve the efficiencies and fungibility through use of a single system for transferring interests both in Ginnie Mae Securities and other United States Government securities and in mortgage-backed securities issued by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. The Association only guarantees that payments required to be made by issuers of Ginnie Mae Securities will be made to the registered owner of those Ginnie Mae Securities. The Association undertakes no other obligation. Under the Book-entry System, the Federal Reserve Banks will be the registered owner of Book-entry Ginnie Mae Securities, not the agent of the Association, and the Association makes no warranty or guaranty with respect to the maintenance of the Book-entry System by the Federal Reserve Banks.

§ 350.2 Definitions.

(a) *Specified Terms.* As used in this part, the following terms shall have the meanings indicated:

Book-entry Ginnie Mae Security. A Ginnie Mae Security issued or maintained in the Book-entry System. Book-entry Ginnie Mae Security also means the separate interest and principal components of a Book-entry Ginnie Mae Security if such security has been designated by Ginnie Mae as eligible for division into such components and the components are maintained separately on the books of one or more Federal Reserve Banks.

Book-entry System. The automated book-entry system operated by the Federal Reserve Banks acting as Depositories for Ginnie Mae, on which Book-entry Ginnie Mae Securities are

recorded, transferred and maintained in book-entry form.

Definitive Ginnie Mae Security. A Ginnie Mae Security in engraved or printed form, or that is otherwise represented by a certificate.

Depository. A clearing corporation within the meaning of Article 8 of the Uniform Commercial Code, including any Federal Reserve Bank, that maintains systems by which ownership and transfer of interests in Book-entry Ginnie Mae Securities are made through entries on the books of such clearing corporation.

Eligible Book-entry Ginnie Mae Security. A Book-entry Ginnie Mae Security issued or maintained in the Book-entry System which by the terms of its Security Documentation is eligible to be converted from book-entry form into definitive form.

Entitlement Holder. A Person to whose account an interest in a Book-entry Ginnie Mae Security is credited on the records of a Securities Intermediary.

Federal Reserve Bank Operating Circular. The publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Reserve Bank maintains book-entry securities accounts (including Book-entry Ginnie Mae Securities accounts) and transfers book-entry Securities (including Book-entry Ginnie Mae Securities).

Ginnie Mae Security. Any security or obligation guaranteed as to payment of principal and/or interest by Ginnie Mae under its Charter Act and issued in the form of a Definitive Ginnie Mae Security or a Book-entry Ginnie Mae Security.

Participant. A Person that maintains a Participant's Securities Account with a Federal Reserve Bank.

Person. An individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but such term does not mean or include the United States or a Federal Reserve Bank.

Revised Article 8. The same meaning as in 31 CFR 357.2.

Secretary. The Secretary of Housing and Urban Development and, where appropriate, any person designated by the Secretary to perform a particular func-

tion for the Secretary, including any HUD officer, employee, or agent.

Security. Any mortgage participation certificate, note, bond, debenture, evidence of indebtedness, collateral-trust certificate, transferable share, certificate of deposit for a security, or, in general, any interest or instrument commonly known as a security.

Securities Documentation. The applicable statement of terms, trust agreement, trust indenture, securities agreement or other documents establishing the terms of a Book-entry Ginnie Mae Security.

Transfer message. An instruction of a member of a Federal Reserve Bank to effect a transfer of a Book-entry Security (including a Book-entry Ginnie Mae Security) maintained in the Book-entry System, as set forth in Federal Reserve Bank Operating Circulars.

(b) *Other Terms.* Unless the context requires otherwise, terms used in this part that are not defined in this part, have the meanings as set forth in 31 CFR 357.2. Definitions and terms used in 31 CFR part 357 should read as though modified to effectuate their application to Ginnie Mae Securities.

§ 350.3 Maintenance of Ginnie Mae Securities.

A Ginnie Mae Security may be maintained in the form of a Definitive Ginnie Mae Security or a Book-entry Ginnie Mae Security. A Book-entry Ginnie Mae Security shall be maintained in the Book-entry System.

§ 350.4 Law governing rights and obligations of United States, and Federal Reserve Banks as Depositories; Rights of any Person against United States, and Federal Reserve Banks as Depositories; Law Governing Other Interests.

(a) Except as provided in paragraph (b) of this section, the following rights and obligations are governed solely by the book-entry regulations contained in this part, the Securities Documentation, and Federal Reserve Bank Operating Circulars (but not including any choice of law provisions in the Security Documentation to the extent such provisions conflict with the Book-entry regulations contained in this part):

(1) The rights and obligations of a Federal Reserve Bank as a Depository with respect to:

(i) A Book-entry Ginnie Mae Security or Security Entitlement; and

(ii) The operation of a book-entry system operated by a Depository as it applies to Ginnie Mae Securities; and

(2) The rights of any Person, including a Participant, against the Federal Reserve Banks as Depositories with respect to:

(i) A Book-entry Ginnie Mae Security or Security Entitlement; and

(ii) The operation of the book-entry system operated by the Federal Reserve Banks as Depositories as it applies to Ginnie Mae Securities.

(b) A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Participant and that is not recorded on the books of a Federal Reserve Bank pursuant to §350.5(c)(1), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant's Securities Account is located. A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to §350.5(c)(1), is governed by the law determined in the manner specified in paragraph (d) of this section.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law specified in paragraph (b) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State.

(d) To the extent not otherwise inconsistent with this part, and notwithstanding any provision in the Security Documentation setting forth a choice of law, the provision set forth in 31 CFR 357.11 regarding law governing other interests apply and shall be read as though modified to effectuate the application of 31 CFR 357.11 to Book-entry Ginnie Mae Securities.

§ 350.5 Creation of Participant's Security Entitlement; Security Interests.

(a) A Participant's Security Entitlement is created when a Federal Reserve Bank indicates by book-entry that a Book-entry Ginnie Mae Security has been credited to a Participant's Securities Account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including without limitation deposits to the Treasury tax and loan accounts, or other security interests in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, such Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the security. For purposes of this paragraph, an "authorized representative of the United States" is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) The Federal Reserve Banks as Depositories have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank or a Person may be created and perfected by a Federal Reserve Bank as Depository marking its books to record the security interest. Except

§ 350.6

as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in § 350.4(b) or (d). The perfection, effect of perfection and priority of a security interest are governed by such applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under such law, including with respect to the effect of perfection and priority of such security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§ 350.6 Obligations of the Reserve Banks as Depositories; No Adverse Claims.

Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in § 350.5(c)(1), for the purposes of this part, the Federal Reserve Banks as Depositories shall treat the Participant to whose Securities Account an interest in a Book-entry Ginnie Mae Security has been credited as the person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to such Security, notwithstanding any information or notice to the contrary. The Federal Reserve Banks as Depositories are not liable to a Person asserting or having an adverse claim to a Security Entitlement or to a Book-entry Ginnie Mae Security in a Participant's Securities Account, including any such claim arising as a result of the transfer or disposition of a Book-entry Ginnie Mae Security by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

24 CFR Ch. III (4–1–11 Edition)

§ 350.7 Authority of Federal Reserve Banks as Depositories.

(a) Each Federal Reserve Bank is hereby authorized as Depository for Book-entry Ginnie Mae Securities to perform the following functions with respect to Book-entry Ginnie Mae Securities to which this part applies, in accordance with the Securities Documentation, Federal Reserve Bank Operating Circulars, this part, and procedures established by the Secretary consistent with these authorities:

(1) To service and maintain Book-entry Ginnie Mae Securities in accounts established for such purposes;

(2) To make payments with respect to such securities;

(3) To effect transfer of Book-entry Ginnie Mae Securities between Participants' Securities Accounts as directed by the Participants;

(4) To effect conversions between Book-entry Ginnie Mae Securities and Definitive Ginnie Mae Securities pursuant to the applicable Securities Documentation; and

(5) To perform such other duties as the Federal Reserve Banks as Depositories may be requested by Ginnie Mae.

(b) Each Federal Reserve Bank as Depository may issue Operating Circulars, not inconsistent with this part, governing the details of its handling of Book-entry Ginnie Mae Securities, Security Entitlements, and the operation of the book-entry system under this part.

§ 350.8 Withdrawal of Eligible Book-entry Ginnie Mae Securities for Conversion to Definitive Form.

(a) Eligible book-entry Ginnie Mae securities may be withdrawn from the book-entry system after Ginnie Mae has approved a request for the delivery of definitive Ginnie Mae securities in the same amount.

(b) A Reserve Bank as Depository shall, upon receipt of appropriate instructions to withdraw Eligible Book-entry Ginnie Mae Securities from book-entry in the Book-entry System, facilitate the conversion of such securities into Definitive Ginnie Mae Securities and their delivery in accordance with such instructions. No such conversion shall affect existing interests in such Ginnie Mae Securities.

Government National Mortgage Association, HUD

§ 350.11

(c) All requests for withdrawal of Eligible Book-entry Ginnie Mae Securities must be made prior to the maturity or date of call of the securities.

(d) Definitive Ginnie Mae Securities that are to be delivered upon withdrawal may be issued in either registered or bearer form, to the extent permitted by the applicable Securities Documentation.

[66 FR 44266, Aug. 22, 2001, as amended at 72 FR 49125, Aug. 27, 2007]

§ 350.9 Waiver of Regulations.

Ginnie Mae reserves the right in its discretion, to waive any provision(s) of these regulations in any case or class of cases for the convenience of Ginnie Mae or the United States, or in order to relieve any Person(s) of unnecessary hardship, if such action is not inconsistent with law, does not adversely affect any substantial existing rights, and the Association is satisfied that such action will not subject the Association or the United States to any substantial expense or liability.

§ 350.10 Liability of Federal Reserve Banks as Depositories.

The Federal Reserve Banks as Depositories may rely on the information

provided in a Transfer Message, and are not required to verify the information. The Federal Reserve Banks as Depositories shall not be liable for any action taken in accordance with the information set out in a Transfer Message, or evidence submitted in support thereof.

§ 350.11 Notice of Attachment for Ginnie Mae Securities in Book-entry System.

The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. These regulations do not purport to establish whether a Federal Reserve Bank as Depository is required to honor an order or other notice of attachment in any particular case or class of cases.

PARTS 351–400 [RESERVED]